

# EMPLOYEE RETENTION CREDIT

An overview of the credit  
and outline of the four steps  
needed to receive funding

Prepared for Running USA

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## **Should Your Organization Claim the Employee Retention Credit?**

The COVID-19 pandemic was and is having an outsized, negative impact on the endurance sports industry. Fortunately, many race directors and event management companies have been able to utilize Paycheck Protection Program (PPP) funds to stay afloat.

However, for a variety of reasons, another even more impactful form of crisis funding, the Employee Retention Credit (ERC), is routinely ignored. The ERC is an excellent tool for qualified businesses and tax-exempt organizations to pay off debts, rehire staff, market upcoming events or use for whatever purpose you need.

In some cases, the dollar amount of ERC funding can exceed an organization's PPP funding amount. Plus, ERCs aren't a loan - in many cases, they are a direct cash refund. We recently worked with a 10-person company to claim nearly \$100,000 in ERCs, and that was for just 2020 and Q1 2021.

One of the biggest challenges for employers considering the ERC is the constantly evolving rules and regulations. Having the rules spread across 3 separate Congressional acts and hundreds of pages of IRS clarifying documents, has created confusion and uncertainty.

This paper will provide an overview of the Employee Retention Credit, outline the four steps needed to receive funding and address other considerations relevant to the credit. While the rules of the game are complex, seeing if the ERC makes sense for your organization is simple. More on that later.

### **KEY TAKEAWAYS**

- The Employee Retention Credit provides qualifying employers a refundable credit of up to \$5,000 for each full-time equivalent employee in 2020 and up to \$7,000 per quarter for each full-time equivalent employee in 2021.
- You are eligible/qualify as an employer if you were in business prior to February 16, 2020 and ordered to fully or partially shut down or if your gross receipts (revenues) fell below 50% for the same quarter in 2019 (for 2020) and below 80% (for 2021).
- Employers can receive PPP loans AND claim the ERC, as long as they don't "double dip" and claim ERCs for payrolls paid with PPP money.
- Tax-exempt organizations are eligible for the ERC.

### **WHAT IS THE EMPLOYEE RETENTION CREDIT?**

The ERC is a refundable payroll tax credit available to businesses and tax-exempt organizations that lost significant business or had to fully or partially suspend operations during the Covid pandemic due to government restrictions. Created by the CARES Act in March 2020, and later amended by the Relief Act and ARP Act, it encourages businesses to keep employees on their payroll.

For 2020, the ERC is a maximum of \$5,000 per full-time employee for an employer whose business has been financially impacted by COVID-19. For 2021, the ERC is a maximum of \$7,000 per employee per quarter.

## **FOUR STEPS TO RECEIVE FUNDING**

There are four steps in the process for an employer to receive the Employee Retention Credit:

1. Qualify
2. Calculate
3. Document
4. Claim

We'll walk through each step of the process at a relatively high level. This overview is intended to provide you with a basic understanding of the process without being overwhelmed by all minutia (e.g. According to Section 2301(c)(2)(B)(i) of the CARES Act...). And yes, that is an actual section of the Act. If you have specific questions, I'm more than happy to delve into the ERC weeds with you.

### **Step 1: Qualify**

An employer must be eligible AND qualify to claim ERCs.

According to the IRS, to be "eligible" for the ERC an employer must be engaged in a "trade or business" and have begun operations prior to February 16, 2020. If your event operates as a tax-exempt organization you may be eligible as well. For purposes of the ERC, a tax-exempt organization described in section 501(c) of the Internal Revenue Code that is exempt from tax under section 501(a) of the Code is deemed to be engaged in a "trade or business."

To "qualify" for the ERC, an employer either must have been shut down by governmental order OR suffered a certain decline in "gross receipts," which usually equates to revenues. While many endurance sports events were shut down due to governmental orders, we encourage most of our clients to utilize the "gross receipts" criteria because 1) it typically covers a larger period of time and 2) many events shut down voluntarily.

To qualify for the gross receipts (revenues) criteria, an employer must be able to check at least one of the boxes below:

For 2020:

- Q2 2020 Revenue is <50% of Q2 2019 Revenue
- Q3 2020 Revenue is <50% of Q3 2019 Revenue
- Q4 2020 Revenue is <50% of Q4 2019 Revenue

For 2021:

- Q1 2021 Revenue is <80% of Q1 2019 Revenue
- Q2 2021 Revenue is <80% of Q2 2019 Revenue
- Q3 2020 Revenue is <80% of Q3 2019 Revenue
- Q4 2020 Revenue is <80% of Q4 2019 Revenue

If your organization was in operation prior to February 16, 2020 and you were able to check any of the above boxes, congratulations, you qualify for the ERC! Now we need to calculate the amount of the credit.

## **Step 2: Calculate**

You can do a back-of-the-envelope calculation as follows:

If you checked the above boxes in any quarter in 2020, multiply the average number of employees you had in that quarter by \$5,000. That is your maximum estimated 2020 ERC.

If you checked the above boxes in any quarter in 2021, multiply the average number of employees you had in that quarter by \$7,000. If you qualified in multiple quarters, add those numbers together to get your maximum estimated 2021 ERC.

So now you have a rough estimate of the financial benefit to your organization of claiming ERCs. A true calculation of the ERC requires a much more rigorous and nuanced approach. That approach requires a detailed understanding of the specific rules, regulations and definitions of terms in the various acts and guidance documents - remember Section 2301(c)(2)(B)(i)...?

If you believe that your organization qualifies for the ERC, the best thing to do is to reach out to your accountant or a tax credit specialist. There's quite a bit of specific knowledge required to perform an accurate, audit-resistant calculation. Keep in mind that in most cases the ERC really just started being used in late 2020 and early 2021, when the rules were changed to allow

employers to get both PPP and ERC funds. This means a good number of accounting professionals have limited, if any, experience with the ERC. Make sure you are working with someone who knows and understands the rules and regulations for the ERC.

### **Step 3: Document**

According to IRS guidance, eligible employers must create and maintain records that support and substantiate their eligibility for the Employee Retention Credit and maintain these records for at least four years.

These records include:

- Documentation showing how the employer determined they were eligible for the credit
- Any records showing a significant decline in gross receipts
- Payroll records supporting qualified wages
- Copies of federal employment tax returns
- Documentation related to whether the employer is a member of an aggregated group

Also, the ARP Act includes a special five-year statute of limitations for the IRS to assess a deficiency for claiming the employee retention credit. This is highly unusual, and may mean the IRS is expecting a vigorous enforcement program to prevent abuse of the ERC. Therefore, proper documentation is critical to an employer's ability to withstand any potential examination.

### **Step 4: Claim**

There are three options for claiming the credit. Which approach you take will depend on the timing of your claim and whether you are claiming the credit for the past, present or future. The options are:

1. Apply the credit towards future payments of federal deposits
2. Request a refund
3. Request an advance payment for future credits

#### **Apply the Credit Towards Future Payments of Federal Deposits**

In anticipation of claiming the credit, employers can retain a corresponding amount of the employment taxes that otherwise would have been deposited, including federal income tax withholding, the employees' share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes for all employees, up to the amount of the credit, without penalty. To do this an employer must claim the credit directly on its quarterly federal employment tax return ([IRS Form 941](#)). At the end of the quarter you (or your accountant) will need to reconcile the reduced deposits with the total credit amount and request a refund for any additional credits due to you.

### Request a Refund

As of this writing, for credits claimed for 2020, Q1 2021 and Q2 2021, you will need to file [IRS Form 941-X](#) (Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund) and request a refund. NOTE: At the current time, the IRS is not processing ERC refunds in a timely manner. If you choose this approach, please be aware that there are significant delays in processing and receiving your refund. But, eventually you will get your refund.

### Request an Advance Payment for Future Credits

If you qualify as a small employer (500 or fewer full-time employees in 2019), then you may request advance payment of the credit using [IRS Form 7200](#) (Advance Payment of Employer Credits Due to COVID-19).

## **OTHER CONSIDERATIONS**

If you want to claim the ERC for 2020, remember you will have to restate your income tax returns. The ERC is not includible in gross income, but it is subject to expense disallowance rules, which effectively make it taxable. For example, if you receive \$100,000 in ERCs, you would be required to reduce your deductible wage expenses by \$100,000 as well.

In addition to having the rules spread across 3 separate Congressional acts, the IRS has issued hundreds of pages of clarifying documents. While simple in theory, the amount of detail required to successfully complete an audit-proof ERC claim can be significant. Employers should seriously consider working with an expert to claim the credit on their employment taxes.

If you have any questions about this article or the ERC please feel free to reach out to me. I'll be happy to have a conversation with you or double check that you qualify.

Remember, for organizations that qualify, the ERC can be a true financial windfall. Make sure you're not missing out.

### About Matt Dieter & RecoupeTax

*Matt Dieter is CEO of RecoupeTax. He can be reached at [matt@recoupetax.com](mailto:matt@recoupetax.com). RecoupeTax is a specialized consulting firm that guides businesses to greater value via tax credits and strategic consulting. RecoupeTax, LLC is not a CPA firm, finance, tax, law, or engineering firm, and nothing contained herein can be construed as legal, financial, accounting, tax, or engineering advice.*